

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:02-Cr-136-FDW

UNITED STATES OF AMERICA,)
)
Plaintiff) ORDER
) AND
v.) AMENDMENT OF JUDGMENT
)
T. B. MOSS, JR.,)
a/k/a T. M. Moss, Jr.)
)
Defendant)

UPON PETITION of the United States Bureau of the Prisons and a Supplement to the Presentence Report (Doc. No. 42) filed by the United States Probation Office, the Court hereby orders the amendment of the Judgment in the Criminal Case (Doc. No. 20) of Defendant T. B. MOSS, JR., a/k/a T.M. Moss, Jr., for the reasons set forth.

1. In Defendant's original Presentence Report, Defendant was deemed an Armed Career Criminal (18 U.S.C. § 924(e)(1)), in part because two state misdemeanor convictions for Assault on a Female were included as qualifying convictions for Armed Career Criminal status.
2. Based on the Bureau of Prison's petition and the Probation Office's Supplement to the Presentence Report (as well as Defendant's motion to vacate his sentence (Doc. No. 43)), the Court finds that the two state misdemeanor convictions for Assault on a Female do not qualify as convictions for Armed Career Criminal status. Since these two convictions do not qualify, Defendant should not have been deemed an Armed Career Criminal. As a result of this error, the Court miscalculated Defendant's United States Sentencing Guidelines (U.S.S.G.) sentencing range to be 188 to 235 months (based on an offense level of 31 and Criminal History Category of VI) and

Defendant's supervised release term to be 5 years. The Court also mistakenly believed Defendant was subject to a statutory minimum sentence of 15 years.

4. *Nunc pro tunc*, based on the Supplement to the Presentence Report (Doc. No. 42), the Court finds that the Defendant's U.S.S.G. sentencing range is 51 to 63 months (based on an offense level of 17 and Criminal History Category of VI) and is subject to a supervised release term of 2 to 3 years. Furthermore, the Court finds that the Defendant does not face a statutory minimum sentence.

WHEREFORE, the Court hereby vacates the Defendant's original sentence of 235 months and original term of 5 years of supervised released.

THEREFORE, based on the Sentencing Reform Act and United States v. Booker, including consideration of all the sentencing factors set forth in 18. U.S.C. § 3553(a), the Court hereby amends its Judgment as follows:

a. The Defendant is sentenced *nunc pro tunc* to a term of 63 months (with the Court sentencing Defendant to the high end of the sentencing range consistent with the Court previously sentencing Defendant to the high end of the range). The Defendant will receive credit for time served on the Defendant's original sentence of 235 months.

b. The Defendant is to serve a 3 year term of supervised release upon release from the custody of the United States Bureau of the Prisons.

c. The Defendant remains subject to all other terms and conditions of his original Judgment in a Criminal Case (Doc. No. 20) except for those explicitly addressed in this ORDER AND AMENDMENT OF JUDGMENT.

AND FINALLY, the Clerk of Court is directed to certify copies of this ORDER AND AMENDMENT OF JUDGMENT to the United States Marshals Service, the United States Bureau

of Prisons, the United States Probation Office, and the United States Attorney's Office.

Signed: June 27, 2012



Frank D. Whitney
United States District Judge

